

GOVERNMENTAL IMMUNITY: SIDEWALK CLAIMS

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House Bill 4686 (reported from committee w/o amendment)

Sponsor: Rep. Harvey Santana

1st Committee: Judiciary

2nd Committee: Local Government

Complete to 12-9-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill specifies that in a civil action, a municipal corporation may assert any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was 'open and obvious'.

FISCAL IMPACT: To the extent that House Bill 4686 reduces municipal liability for sidewalk falls, it could result in fewer payouts to plaintiffs and reduce litigation expenses for municipalities.

THE APPARENT PROBLEM:

Officials in Michigan's cities and towns build and maintain thousands of miles of sidewalks for their citizens' safety and convenience. When those sidewalks fall into disrepair, citizens seek compensation for injuries by filing "trip and fall" lawsuits.

For example, the City of Detroit (comprising 143 square miles) has an estimated 4,500 miles of sidewalks to maintain—a distance tantamount to a roundtrip between Detroit, Michigan, and Los Angeles, California. For fiscal year 2013, city officials paid almost \$6 million in sidewalk lawsuit settlements—roughly 25 percent of all the city's lawsuit payouts.

Private business owners may employ an "open and obvious" defense against "trip and fall" lawsuits. That is, the private sector has a common law duty to make its premises reasonably safe, and it is protected from liability if someone suffers an injury as a result of an 'open and obvious' dangerous condition.

City officials, on behalf of Michigan taxpayers, should also be able to employ an "open and obvious" defense when "trip and fall" lawsuits are filed. To that end, legislation has been introduced.

THE CONTENT OF THE BILL:

House Bill 4686 would amend Public Act 170 of 1964, which among other things sets uniform standards for municipal liability. The bill specifies that in a civil action, a municipal corporation that has a duty to maintain a sidewalk may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was 'open and obvious'.

Now under the law, a municipal corporation in which a sidewalk is installed adjacent to a municipal, county, or state highway must maintain that sidewalk in reasonable repair. Under current law, a municipal corporation is not liable for breach of duty to maintain the sidewalk unless the plaintiff proves that at least 30 days before a particular injury, death, or damage, officials knew or should have known of the sidewalk's defect. House Bill 4686 would retain all of these provisions.

Current law also specifies that in a civil action, a municipal corporation is presumed to have maintained the sidewalk, and this presumption can only be rebutted by facts showing that the cause of injury was a vertical discontinuity of two inches or more, and/or there was a dangerous condition in the sidewalk, itself. House Bill 4686 also would retain this presumption.

As noted above a new defense within House Bill 4686 specifies that in a civil action, a municipal corporation that has a duty to maintain a sidewalk may assert, in addition to any other defense available to it, any defense available under the common law with respect to a premises liability claim, including, but not limited to, a defense that the condition was 'open and obvious'.

MCL 691.1402a

ARGUMENTS:

For:

Proponents of the bill argue that House Bill 4686 would not prevent an individual from suing any municipality for a sidewalk defect, but, rather, the bill permits municipalities to use an 'open and obvious' defense against such grievances. Simply put, an 'open and obvious' danger serves as a warning to self-protection.

Further, the bill extends cost savings already enjoyed by the private sector, to taxpayers in the public sector. How so? Proponents note that courts have permitted private enterprise to employ an 'open and obvious' defense for years, such that today it is routinely considered their first line of protection in such cases. So, while the private sector has a common law duty to make its premises reasonably safe, it is protected from liability if a visitor suffers an injury due to a dangerous condition that is an 'open and obvious' one. The same policy should apply in the public sector.

Representatives for the City of Detroit note the city has roughly 4,500 miles of sidewalks to maintain. The city is not a member of the Michigan Municipal Risk Management Association—a self-insurance pool of municipalities—because of its extraordinary exposure to litigation. Further, the city cannot buy private insurance, because it is cost-prohibitive. Consequently, the nearly \$6 million in sidewalk lawsuit settlements for fiscal year 2013 were paid directly from the city's general fund—an unacceptable expenditure in a cash-strapped city whose financial resources are needed to enhance police, fire, and other essential municipal services for residents, businesses, and visitors.

Against:

The Negligence Law Section of the State Bar of Michigan notes that House Bill 4686 would add the 'open and obvious' doctrine as an admissible defense in personal injury cases related to municipal sidewalks. The members of the Negligence Law Section note that the legislature recently enacted liability restrictions to such cases (known colloquially as the 'two-inch' rule) that already limit exposure of municipalities to litigation stemming from poorly maintained sidewalks. Specifically, three years ago, the legislature enacted Public Act 50 of 2012, to affirm that municipalities are "presumed to have maintained the sidewalk in reasonable repair" if any unevenness in the walkway is less than two-inches.

Consequently, opponents argue that House Bill 4686 would, for all practical purposes, make municipalities completely immune from lawsuits made by people injured by defective sidewalks. Further, they note the bill merely shifts the responsibility for paying for these injuries onto private or public health insurers, and removes the incentive for local governments to properly maintain sidewalks in a safe manner.

POSITIONS:

The City of Detroit supports the bill. (11-4-15)

The City of Taylor supports the bill. (11-4-15)

The City of Dearborn supports the bill. (11-4-15)

The City of Lansing supports the bill. (11-4-15)

The Michigan Municipal League supports the bill. (11-4-15)

The Negligence Law Section of the State Bar of Michigan opposes the bill. (11-4-15)

The Michigan Association for Justice (the association of trial lawyers) opposes the bill. (11-4-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.